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JOHN MARSHALL
CONSTITUTIONALIST

A DRAMA
IN FIVE ACTS



BY
EDWARD J. WHITE

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March 27

TO

HON. ALBERT J. BEVERIDGE,

whose excellent biography of John Marshall
inspired this drama, it is respectfully in-
scribed, with grateful acknowledgment.



PROLOGUE:

Spirit of America.

In Ancient Rome, two thousand years ago,
A race of men existed who would not brook a tyrant in their
midst;
Of noble mold, their lives were consecrate to Liberty and Law;
Their love for Justice was a dominating force,
And their Republic was the admiration of the world.

Such men were Brutus, Cato, the elder Antony, Scaevola, Fabius,
And a host of others who, with the unnoticed thousands of con-
temporaries, unknown to history,
Built up the grandeur that was Rome.

The world saw not their like again
Until the stirring period of our Revolution,
When the Great Arbiter of the destinies of men,
For the common good of man,
In the Spirit of America, again brought forth a noble race.

Like unto the sturdy Romans of the past,
They were born, like giants, 'mid the vortex of our Revolution,
These authors of our immortal Constitution,
The trumpet sound of "Liberty or death" was then the vibrant
impetus of manhood.
From the rough resources of a wilderness,
These patriots built and hedged around by law
The mighty edifice to Liberty,
The Nation formed by union of the States,
A lasting monument to Freedom,
Our own United States!

The grateful Soul of America
Should ever then respond, with reverence,
For these patriots, whose nerve
And wisdom serve us still:
And the names of Washington and his illustrious generals,
And of Marshall, Otis, Adams, Franklin, Henry, Jefferson, and
The long list of other patriots, who founded our Republic,
Should never be forgotten
So long as Freedom and Justice are cherished on the earth!

John Marshall followed Washington as a soldier of the Revolution;
His dramatic struggle, in the formative period of our Government,
For our Constitution,
With his later, Titanic labor,
Against the stupendous opposition of the States,
To establish, upon a granitelike foundation, our fundamental law,
Is a heritage, along with the blessings of a
Beneficent Government by Law, emanating from the people,
That posterity should revere
So long as our free institutions shall endure
And Liberty and Union are preserved in this fair land!



ACT I.

The Revolution.

Scene I.

THE CULPEPPER MINUTE MEN.

(A body of 100 young frontiersmen, in Culpepper County, Va., gathered on a common, in May, 1775, to organize a military company. The man who had called the meeting and who was to organize them failed to appear, so it became necessary to select a leader.)

YOUNG FARMER: Boys, our captain has not arrived; anyway, we must have a lieutenant. Who shall it be?

(Enter John Marshall.)

A VOICE: I say John Marshall.

ANOTHER: I say so, too.

YOUNG FARMER: So say you all?

CHORUS OF VOICES: Yes, we want John Marshall.

YOUNG FARMER: Marshall, will you be our lieutenant?

JOHN MARSHALL: I will act until you can find a better man.

ALL: Hurrah, hurrah! Speech!

JOHN MARSHALL: My friends, all Virginians have read or been told of Patrick Henry's appeals to his countrymen, in the name of Freedom. As temperate and law-abiding a citizen as Col. Washington has assured us that "No man should scruple or hesitate a moment to use arms". These words have been carried over the countryside; your presence from the

mountain cabins and forest clearings, and the grim determination on your faces, show that you will make Henry's flaming words good with your lives if need be! I am glad that the news of Concord and Lexington has found us ready to meet the issue.

My father has already enlisted and, for two years, has given me military instruction and practice.

I come, my comrades, to meet you as fellow-soldiers who are likely to be called on to defend their country. Your own rights and liberties are at stake. Your brothers in New England have fought and beaten the British. We can do it, too! Now is the time to brighten our fire-arms and learn to use them in the field. Let our motto be "Liberty or death", and each one of our wilderness company should have his sweetheart, wife or mother work these words in white letters on the breast of his hunting shirt. Are you ready?

(Applause.)

MEDLEY OF VOICES: Yes, we are! Give us Liberty or give us death!

MARSHALL: Now, fall into line and I will give you some practice.

(Shows them how to form line, and, taking position in front, and, bringing his own gun to his shoulder, instructs them in the manual of arms.)

MARSHALL: Now watch me while I give the commands and go through the movements.

(He then gives the commands slowly and distinctly, and illustrates the movements with his own rifle, so each man understood the orders and how to execute them. He then puts the company through the drill.)

ACT I.

Scene II.

NEAR IRON HILL, PA., SEPTEMBER 9, 1777.

(Washington's camp near Iron Hill, Pa. Seated around a small table, on casks, boxes and benches are Gen. Washington, Gen. Wayne, Gen. Maxwell, Gen. Lafayette, Gen. Green, Gen. Sullivan, Col. Thomas Marshall. Capt. John Marshall standing.)

GEN. WAYNE: How can our liberty be achieved except by an army equipped, supplied and directed by a competent central government? We have seen our officers and men driven to madness and despair by the pusillanimous weakness of Congress. Our soldiers see their wounds and sufferings come to naught under the cursed sham, mockery and shallowness of State provincialism, which, under the doctrine of so-called "State sovereignty", has been set up in the place of our National Government. I wish these Congressmen and Governors could be mustered into service.

GEN. WASHINGTON: I have informed the committee of Congress that no army was ever worse supplied than ours; that our soldiers, the greater part of last campaign and the whole of this, have scarcely tasted any kind of vegetables and that we have been without salt and vinegar. I told them that soap was in great demand, and that a soldier's pay was so meager he could not purchase it, by reason of which his consequent dirtiness, added to the many putrid diseases incident to the army, and the lamentable mortality. It looks as if we could only depend upon the indomitable "Spirit of America".

GEN. WAYNE: I have ordered officers, as well as privates, to be instantly shot if they are so far lost to

all shame as basely to quit their posts without orders, or shall skulk from danger or offer to retreat, before orders.

GEN. WASHINGTON: Our men are being most sorely tried and we must proceed with moderation, but of course, discipline must be maintained.

GEN. MAXWELL: One reason for the chaotic state of the army is the lack of trained officers and the ignorance of the soldiers in the simplest elements of drill or discipline. Many of the commissioned officers know little more than the men, and we have no central authority. But what could you expect under the disorganizing effect of local control and the inability to secure compulsory service, which the pompous authorities of the new born "sovereign and independent States" deny to the National Government.

GEN. LAFAYETTE: But the spirit of the men, for the most part, is wonderful and makes up for their lack of training. Baron von Steuben and my officers are rapidly remedying the lack of training by instructing both privates and officers in the manual.

COL. MARSHALL: I will wager my Virginia regiment of minute men are equal to four times their number of British, illfed and badly neglected as they are.

GEN. WASHINGTON: (Looking at map) Howe is rapidly advancing and is among his friends in Pennsylvania. I think it is essential to make an impression on disaffected Philadelphia, and we must march through this city on our way to confront the enemy. They think we are but small in numbers and wretched in equipment. A parade of eleven thousand men through this Tory-infested metropolis ought to give some heart to patriotic sympathizers and encourage

Congress. Our troops should make the best appearance possible. Have the men all scour up their arms and wear sprigs of green in their headgear. In your orders for the march through the seat of Government, provide that, if any soldier shall dare to quit the ranks, he shall receive punishment at the first halting place. And not a woman is to be seen with the troops on their march through the city. In the meantime, we must harass the enemy as much as possible. (Studies map). Cornwallis' men should reach the vicinity of Iron Hill tomorrow. What are your suggestions, General Wayne?

GEN. WAYNE: I would let General Maxwell select eight or nine picked officers and sergeants and a hundred rank and file from each brigade and throw them forward to Iron Hill.

GEN. WASHINGTON: General Maxwell, select your officers for this adventure from this list (hands roll of officers to Gen. Maxwell).

GEN. MAXWELL: Colonel Marshall, I would like to have your son, Captain John Marshall, among this picked list of officers.

COL. MARSHALL: I am sure he will be proud to serve under your command.

CAPT. MARSHALL: I am honored in the opportunity to do so.

GEN. WASHINGTON: Let this body of select, light infantry be posted, during the night, on the road along which the British column will advance, and annoy the enemy and retard his progress as much as possible.

(Looks at map.)

It is impossible to longer protect Philadelphia without a victory. General Howe is approaching in two columns. His left is now encamped at New Garden, while Lord Cornwallis, with the right, occupies the ground at Hockessen meeting house. When these armies unite tomorrow, they will be but seven miles away. We must take our stand upon the Brandywine. Being easily forded, it is not an effective barrier in a general engagement, but we must now hazard the issue or lose the capital to the enemy.

(Enter an officer, who salutes and delivers a message to Gen. Washington, who reads it.)

GEN. WASHINGTON: Colonel Bland of the cavalry gives information that, at two o'clock, the column which is led by Lord Cornwallis, accompanied by Sir William Howe, in person, after a circuit of about seventeen miles, to mislead us, effected a juncture with the other forces and are now advancing in great force to make a formidable attack. We must receive them, inferior in numbers and ill-equipped as we are. General Sullivan, you and Gen. Stirling will advance this evening, up the Brandywine and front the column of the enemy now marching down the river. The division commanded by General Wayne will remain at Chadd's Ford, to keep Knyphansen in check. General Maxwell's light infantry will cross Chadd's Ford and delay as long as possible the approach by occupation of the hills to the right of the stream along the road to Chadd's Ford. General Green's division, with which I will remain, will take the central position in reserve between the right and left wings. I know that you will all exhibit such a degree of order, firmness and resolution as will preserve the discipline

and bravery of your men. May success crown your efforts is my prayer. They have eighteen thousand men, and we have eleven thousand, but we will meet them all at the Brandywine on September 11th, and I have no doubt you and your men will give a good account of yourselves.

ACT I.

Scene III.

BRANDYWINE, SEPTEMBER 11TH, 1777.

(Gen. Wayne, Gen. Maxwell, Capt. John Marshall, and several minor officers and men before Chadd's Ford. Fighting in the distance.)

GEN. WAYNE: Captain Marshall, I am told you gave a good account of yourself at Iron Hill and in the skirmish with the enemy this morning.

CAPT. MARSHALL: We held them as long as we could without needless sacrifice of men.

GEN. MAXWELL: Captain Marshall always gives a good account of himself. At Iron Hill, we were forced to retreat after losing forty killed and wounded, but we left many of the enemy on the Hill. Captain Marshall's men this morning killed a British captain, with thirty privates, and drove them out of the wood and took a field piece.

(Exit Gen. Maxwell.)

CAPT. MARSHALL: But large numbers of the enemy forced us to cross the river. General Wayne, my father's regiment is holding the advanced position, with General Sullivan at the right. With your permission, I would like to join him. Our Virginians will not be stampeded.

GEN. WAYNE: You may join your father.

(Salutes. Exit Capt. Marshall.)

(Enter Gen. Washington, in haste.)

GEN. WASHINGTON: Cornwallis' men are battering the right wing. Many of Sullivan's men were stampeded, but we turned them back. Colonel Marshall and his Virginia minute men held their ground.

(Enter Col. Marshall, in haste.)

(Salutes.)

COL. MARSHALL: My son is temporarily holding my command. My regiment retained its position without losing an inch of ground until both its flanks were turned. Its ammunition is now nearly expended, and one-half our officers and a third of our soldiers have been killed or wounded. I have lost two mounts. There is no panic in my command, but General Sullivan agrees with me that we should now retreat. My men will do so orderly.

GEN. WASHINGTON: By all means, do so. I congratulate you and your superb Virginia command on your splendid day's work.

(Salutes. Exit Col. Marshall.)

(Enter an orderly, who confers with Gen. Wayne.)

GEN. WAYNE: General Knyphausen is now preparing for an assault in dense masses to force a crossing at Chadd's Ford, and I will go to my command.

GEN. WASHINGTON: Do not sacrifice your men. When General Sullivan's right wing retires, fall back as orderly as possible and inflict all the punishment you can.

(Salutes. Exit Gen. Wayne.)

(Enter Capt. Marshall. Salutes Gen. Washington.)

CAPT. MARSHALL: General, the right wing has retired in good order. We were out of ammunition.

GEN. WASHINGTON: You and your valliant father are entitled to my own and the lasting gratitude of your countrymen. If all our officers and men were so well trained and possessed of your undaunted spirit, we would drive the British from our shores in a short time.

CAPT. MARSHALL: I suppose it is but natural in newly raised armies, from which undeserving officers have not been expelled, and where they are unused to danger, to find conduct that is not altogether uniform. Our regiments that have served in the preceeding campaigns maintained their ground with the firmness and intrepidity of veterans. With your permission, I will now assume my command with General Wayne.

GEN. WASHINGTON: Do so, and tell him to protect his men, and fall back as soon as he sees the crossing of Chadd's Ford is inevitable.

(Exit Capt. Marshall.)

(Enter two officers bearing Gen. Lafayette.)

GEN. WASHINGTON: My dear Marquis, I hope you are not seriously wounded.

GEN. LAFAYETTE: It was what a soldier may expect. It is a bagatelle. My men fought bravely. I hate to leave my command with only a broken leg, when so many brave comrades have given their lives.

GEN. WASHINGTON: There will be another day, my dear General, and neither America nor France can afford to lose Lafayette (addressing officers). See that he gets surgical attention at once. I will be with you, to learn the extent of your injuries, as soon as possible.

(Exit officers with Lafayette.)

(Enter Gen. Wayne.)

GEN. WAYNE: Well, my men held the ford as long as they could, then retired. As provisioned by the State, many of their muskets were scarcely fit for service; they were of unequal caliber, and the cartridges of one would not fit another gun, and their fire could not do the execution that the enemy did. Think of an army, so provisioned, put in the field against a well-fed, well-paid and efficiently armed enemy! It is madness!

GEN. WASHINGTON: It is a very dear lesson Congress is learning, and was to have been expected. Perhaps they will pay more attention to my pleading in the future.

(Orderly hands Gen. Wayne a list.)

GEN. WAYNE: It is estimated the British have lost six hundred in killed and wounded, and if we had been properly provisioned and armed, we could have driven them back. As it is, we have probably lost a thousand men in killed and wounded and eleven pieces of artillery. I would like to tell our Congress that they can never attain liberty by talk alone.

GEN. WASHINGTON: We must wait and hope for a change in their policy and now fall back to Chester. An all-wise Providence may stop the British if Congress, dominated by the weakness of the States, will not let us. They cannot advance through the mud and rain. General Wayne, we must save Philadelphia. Your men, with General Maxwell, will be detailed to retard their progress. General Smallwood will reinforce you. I know your men are tired and need rest. Beware of surprises

GEN. WAYNE: If all my men were like General Maxwell and Captain Marshall, I could hold them.

GEN. WASHINGTON: We will try to secure arms and ammunition, and engage them with a rested army at Germantown, and God grant that with this experience the next engagement may prove more successful than this has.

(Exit Gen. Wayne.)

GEN. WASHINGTON: (Praying) "God, grant to us strength and wisdom to meet the trials of this hour. Help us to save our Nation's Capital from the enemy and revive the drooping Spirit of America, and give its representatives vision to see that a nation cannot be defended against a permanent, well-supplied army by a voluntary, temporary force that is not properly fed or armed. Give to my brave, famished patriots strength and fortitude to protect their country from its foes, and grant us that the independence of America shall not perish in its cradle."

ACT I.

Scene IV.

VALLEY FORGE, DECEMBER 23, 1777.

(A party of ten or twelve half-clad, cold and shivering soldiers before a hut. A camp fire burning near them.)

FIRST SOLDIER: I wish the well-fed American guests of Philadelphia, who are banqueting and fawning over Howe's men, had to spend a few nights in our huts, without food, clothes or blankets.

SECOND SOLDIER: Our last rations were consumed December second, and the "fire-cake" is becoming very scarce. Our men are freezing and starving to death. With Americans here in this pitiful condition,

while fighting for their country, think of the treachery through which the cattle, sent to us, were driven to over-supplied Philadelphia, while our famishing patriots are left to die.

(Enter Capt. John Marshall.)

I say a people represented by such a Congress don't deserve an army to fight for their liberties. If it were not for my love for General Washington, I would say we ought to all go home and let these States' rights statesmen be made slaves and vassals of old King George.

CAPT. MARSHALL: My comrades, we have not been given the proper backing by Congress, but all our representatives are not to blame. Our Government now is in but an experimental stage. Of course, we see that, to defend and protect the States, there must be a competent, central National Government, for, otherwise, there can be no uniformity of action. The trouble about the State sovereignty theory is that, when concerted action is necessary, they cannot agree, and when we need an army, all equally armed and provisioned, we find our troops armed with different kinds of guns and ammunition, or none at all, and we are forced to fight an enemy, armed, provisioned and garrisoned by one central authority, without conflicting methods.

But we must not lose heart. We are fighting for ourselves and our loved ones, and thousands of loyal, liberty-loving Americans who will, in time, bring us succor.

FIRST SOLDIER: What you say is right, "Silverheels", but, if we all starve or freeze while they are

debating over the rights of the States, how can we save them? Self-preservation, to us, is a higher law than "States' rights".

THIRD SOLDIER: Yes, I had rather be killed in battle outright, than left to starve or freeze through the neglect of my countrymen. But why discuss it? We must be philosophers and stoics even if Congress will not help us. "Silverheels", tell us of your first engagement.

CAPT. MARSHALL: My first battle was that of Great Bridge, otherwise known as "Little Bunker Hill", the first fight of the Revolution in Virginia. The Culpepper minute men were mustered out September 1st, 1775, in Major Clayton's old field, near the County seat. Patrick Henry sent an express, telling of the threatening preparations of Governor Dunmore, a hundred miles to the south. We marched immediately, and, in a few days, we were in Williamsburg. Our dress was that of the backwoodsmen and we were armed only with the weapons of the frontier. Our hair was mostly long and fell behind and was untied and unqueued. The people at first seemed afraid of us, but we demeaned ourselves as patriots and gentlemen, and they soon treated us with respect and kindness. Governor Dunmore and the Loyalists awaited our coming in a fort located in the Dismal Swamps, accessible on either side by a long causeway. We made our camp within gunshot of this post in the mud and mire, at the south end of the causeway, and threw up breastworks across it between us and the fort. As we had no cannon, we could not attack the fort, so had to resort to strategy to force the Loyalists to attack. My father, Colonel Marshall, finally resorted

to a ruse to get them to make an assault. He got his orderly to pretend to desert and mislead the Governor as to the numbers opposing him. He went to the enemy and told them there were not more than three hundred of the insurgents. The Governor ordered the Loyalists to charge and take the Virginians, "or die in the attempt". They did not take us. Between day-break and sunrise, Captain Fordyce, leading his grenadiers, six abreast, swept along the causeway toward our breastworks. The shots of the sentinels aroused the camp, and the bravest rushed to the works, firing at will. The gallant Fordyce fell dead within a few steps of our breastworks. Every grenadier was killed or wounded while the Virginians did not lose a single man. Among the slain were four of the King's officers. This was the battle of Great Bridge, otherwise called "The Little Bunker Hill".

SECOND SOLDIER: You were with General Wayne at Brandywine and Germantown, weren't you?

CAPT. MARSHALL: Yes. Well, we must be doing something or we'll freeze. Let's have a race or a game of quoits.

FIRST SOLDIER: All the best runners in the regiment have seen your pace. "Silverheels", but let us try the quoits.

CAPT. MARSHALL: I'll take Dougherty, Kopp and Smith.

FIRST SOLDIER: And I'll take Slim and Fuzz and Shortie.

CAPT. MARSHALL: Where are the horse-shoes?

SECOND SOLDIER: (Getting them) Here they are.

(Sides so selected take their positions around either peg, set eighteen or twenty feet apart, and commence to throw quoits, while soldiers gather to watch the game.)

ACT II.

Courtship and Marriage.

Scene I.

YORKTOWN, 1780.

(Home of Jacqueline Ambler, next door to headquarters of Col. Thomas Marshall. In small, scantily furnished room, Rebecca Ambler, an invalid, with her daughters Eliza, Nancy and Mary [14], are sewing.)

NANCY AMBLER: Mother, tell us of Mr. Jefferson's courtship?

ELIZA AMBLER: Yes, please do.

MARY AMBLER: (Looking up from her sewing) Just think! How nearly the author of the Declaration of Independence came to being our father! "When, in the course of human events," did he offer to pledge to you, mother, his life, his fortune and his sacred honor?

REBECCA AMBLER: It is now but a pleasant recollection of twenty years ago. He was an ardent and faithful admirer, and I liked him very much. Mr. Jefferson was the son of Jane Randolph, who had married his father, Peter Jefferson, a planter. They lived near Charlottesville, Albemarle County, Virginia. He had been taught Latin, Greek, French and mathematics by a private tutor, and, at sixteen, he entered William and Mary College. As a boy, he was tall, freckled and had red hair and hazel eyes. In Williamsburg, he soon became one of the leaders in all social functions, and frequently took me to the balls given in the Apollo Room of the Raleigh Tav-

ern. During his first year in college, he seemed carried away with the gay, social life, but, after a year or so, he became a most diligent student, and entered the law office of George Wythe as a student of law. He was smart, well educated, and had an attractive personality. He danced well, played the violin and wrote pretty verses to me. I was the "Campana in die," "Belinda," "Admireb" and the "R. B." of his letters. During the years '61, '62 and '63, he was quite devoted to me. He frequently offered his hand in marriage, but I did not love him and preferred your father. That, in short, is the story.

NANCY AMBLER: Well, with his exclusive States' rights views, I think you did right.

ELIZA AMBLER: No one, of course, can question his love of country, but I prefer men who will fight for their country.

MARY AMBLER: Yes, I want a man who is not afraid to fight, and, if need be, die for his country!

REBECCA AMBLER: You are rather young, my dear, to be thinking of the kind of man you want.

MARY AMBLER: Well, I'll know him when I see him, anyway.

ELIZA AMBLER: I understand Captain John Marshall, of the Eleventh Virginia Regiment of the line, has joined his father's headquarters.

NANCY AMBLER: They say he is a very gallant officer and distinguished himself by valiant service at Brandywine and Germantown, Valley Forge and Monmouth.

ELIZA AMBLER: Everybody speaks of him as a very paragon of manly virtues. I have seen his letters to his mother and brothers, full of filial affection. The eldest of fifteen children, he was devoted to his

younger brothers and sisters and they idolized him. But they say, however, he is an ungainly dresser, is slovenly and unkempt and has no pride at all about his appearance. Of course, I am anxious to meet him, and hope he goes to the ball.

MARY AMBLER: "They say" has no right to criticize such hero over things so trivial. You are giving yourselves useless trouble. I have made up my mind to go to the ball, and will set my cap for him and eclipse you all.

REBECCA AMBLER: That is a strange remark for a diffident, bashful girl of fourteen, Mary. You have not even been to dancing school and won't know how to act at this fashionable ball.

MARY AMBLER: I know how to dance, just the same, and I am going to this ball and meet Captain John Marshall of the Eleventh Virginia Regiment of the line.

ACT II.

Scene II.

BALL AT YORKTOWN AND MEETING WITH MARY AMBLER.

(Interior of ball room, where gaily dressed women and their military escorts are dancing the minuet. Mary Ambler and her sister Nancy are standing to one side, looking toward Capt. John Marshall, thin to gauntness, his ill-fitting garments hanging about him loosely, and he is timid to the point of embarrassment.)

NANCY AMBLER: There is your hero, Mary, now make your threat good.

(Dance closes.)

ELIZA AMBLER: (Approaching with Major Dick) Mary, did you meet your Adonis? Isn't he a spectacle? I have lost all desire to become agreeable in his

eyes since I beheld his awkward figure, unpolished manners and total neglect of person. He is the talk of the ballroom.

MARY AMBLER: He has a wonderful eye; his dress doesn't matter, and I like him very much.

(An officer approaches with Capt. Marshall, who introduces him to the three young ladies; the elder two express chilly greetings, and then depart. Marshall shakes hands with Major Dick, who also leaves.)

CAPT. MARSHALL: Your sisters, like their distinguished mother, are very popular and seem at home in a ballroom. Do you dance?

MARY AMBLER: I never have been to a ball before, but I will dance with you. I came here to meet you.

(Music starts.)

CAPT. MARSHALL: Shall we try this dance? You will find me an awkward partner.

MARY AMBLER: I came here to dance with you.

(After two or three unsuccessful efforts to dance, they stop, amid confusion, to the merriment of the elder sisters.)

MARY AMBLER: Do tell me of Germantown.

CAPT. MARSHALL: After Brandywine, the British occupied the Capital. Congress, frightened and crest-fallen, fled to York. Even before these States' rights statesmen were driven from their cozy quarters, they concluded that the prospect was gloomy and foreboding. They wanted General Washington to strike, regardless of the fact that he was without ammunition, guns or supplies. By some miracle, our dear Commander procured provisions, and we got our munitions in serviceable condition for a surprise attack on Germantown. General Washington planned the attack admirably, as the British have since ad-

mitted. In the evening of a chill October day, General Washington gave the order to advance. Throughout the night we marched, and the three divisions attacked almost simultaneously in the early morning. I was with the left wing, under General Woodford, General Wayne being in command. All went well at first and we drove the British right from the ground, and charged, when they retreated, with loud cheers. A small detachment of the enemy, however, got possession of the Chew House and poured such a murderous hail of lead into our ranks, we had to fall back. I saw my comrades fall in heaps around me, while we vainly strove to take this well-defended stone house of the old Tory Judge. A thick fog arose and we could only see dim objects before us. The smoke from burning stacks of hay made the darkness thicker and our fire was directed by the flashes of the enemy's guns. With the rattle of the muskets and roar of cannon, our boys kept up the cheering, until retreat, which we had now learned so well how to do, became inevitable. They followed us about nine miles, but we finally stopped their pursuit. After this, Congress madly urged General Washington to storm Philadelphia, but his good sense and affection for his men led him to go into winter quarters, until he could procure provisions and supplies.

MARY AMBLER: Can't you have tea with me to-morrow at six? I know mother would love to have you.

CAPT. MARSHALL: I will be delighted to meet your mother. I saw Major Dick talking to you, do you like him?

MARY AMBLER: Yes, very much, but he is almost as old as my father. My father calls me "Polly."

CAPT. MARSHALL: The name suits you, not because you are a parrot, but a sweet, radiant, dimpled little woman. I wish I could call you "Polly."

MARY AMBLER: Not before people, but you may when we are alone. Here come my sisters.

(Nancy and Eliza Ambler approach.)

Be sure and come to tea tomorrow evening.

CAPT. MARSHALL: If I come, will you give me one of your ringlets to remember you by?

MARY AMBLER: Well, perhaps. We'll see when you come. Will you tell me of your other battles?

CAPT. MARSHALL: Yes, and read poetry to you.

MARY AMBLER: Until to-morrow, then. Good night.

(Capt. Marshall kisses her hand and takes leave of her.)
(Two officers watch them part.)

FIRST OFFICER: Captain Marshall makes love just like he fights.

SECOND OFFICER: If he wants her, he would climb an Allegheny of skulls and swim an Atlantic of blood to have her.

ACT II.

Scene III.

MARRIAGE AT JOHN AMBLER'S HOME IN VIRGINIA,
JANUARY 3, 1783.

(A spacious room, in which are many ladies and gentlemen, including John Ambler, Jacqueline Ambler, Rebecca Ambler, Mrs. Covington, Col. Thomas Marshall, Mrs. Thos. Marshall, several brothers and sisters of Capt. John Marshall, Mary Ambler and Capt. John Marshall, all seated around an open fire.)

COL. THOS. MARSHALL: My son, have you secured your nest for your little bird?

CAPT. MARSHALL: Yes, father; we have a fine, little, two-room cottage in Richmond.

COL. THOS. MARSHALL: Have you a barn? I want to give you a pair of horses if you are fixed to take care of them.

MARY AMBLER: We are in a receiving mood today.

JOHN AMBLER: So you are to enter the legal profession in Richmond, Capt. Marshall? It is a good Bar.

CAPT. MARSHALL: Yes, Randolph, Wickham, Wythe, Innes, Ronald, Campbell and Call have made the Bar of the Old Dominion historic, and, among such lawyers, a young man from the backwoods will, no doubt, have a struggle for a part of the legal business.

MARY AMBLER: Never fear but what we will make a success.

CAPT. MARSHALL: With such a partner for life, I cannot fail.

(Negro servant passes wine and glasses.)

JOHN AMBLER: I propose the toast: To the success of this life partnership; may God bless their union and long life, happiness and prosperity be its portion.

(All stand and drink.)

(Marriage ceremony is performed, under Episcopal rites. Capt. Marshall kisses the bride, and, after him, Col. Thos. Marshall, John Ambler and all the male guests do the same.)

ACT. III.

Virginia Constitutional Convention, June 2nd 1788.

Scene I.

ANTI-CONSTITUTIONAL ARGUMENT OF PATRICK HENRY.

(The Virginia Constitutional Convention was one of the most notable, parliamentary contests the world has ever witnessed. It consisted of 170 members; was held in the "New Academy" at Richmond. About a fourth of the members had been soldiers of the Revolution, and to these were added statesmen, jurists, lawyers, doctors, preachers, planters, merchants and Indian fighters. Edmund Pendleton was chosen President of the Convention, and, prominent among the members were Marshall, Henry, Wythe, Blair, Covington, Innes, Randolph, Macon, Madison, Lee, Fifer, Grayson, Bland, Harrison, Nicholson, Monroe. Meeting is in progress.)

PATRICK HENRY: Mr. President:

CHAIRMAN PENDLETON: The Chair recognizes Mr. Henry.

PATRICK HENRY: What are the reasons for this change of Government? A year ago, the public mind was at perfect repose. Now it is uneasy and disquieted. A wrong step now, and our Republic may be lost. The Constitutionals propose a great, consolidated Government. What right have the framers of the Constitution to say, "We, the people," instead of "We, the States?" Why this fundamental change? Even from the illustrious man who saved us by his valor, I would have a reason for this conduct. The Constitution makers have no authority except to amend the old system under which all were satisfied. "We, the people," instead of "We, the States," is an alarming transition, a revolution as radical as that which separates us from Great Brit-

ain. Sovereignty of the States, rights of conscience, trial by jury, liberty of the press, all of these are pretensions of human rights and privileges, which are imperilled, if not lost, by the change. The new Government may prevent licentiousness, but it will oppress and ruin the people. It is clear when it speaks of *sedition*, but fatally vague when it speaks of *privileges*. Who will defend us from such executions as we have seen in our State, by bill of attainder, in the case of Josiah Philips? Where are the dangers the Constitutionals conjure up under the Confederacy? It was the despised Confederacy that carried us through the war! Think well before you part with it! Dangers under the Confederacy are wholly imaginary; if any arise, I depend upon the American spirit to defend us.

The method of amendment provided in the Constitution is a mockery. It shuts the door on amendment. A contemptible minority can prevent the good of the majority. A standing army will execute the execrable commands of tyranny. And who will punish them? Will your macebearer be any match for a disciplined regiment? It will convert our country into a great and mighty empire. The Constitution's so-called checks and balances are mere rope-walking, chain-rattling, ridiculous contrivances.

Who knows the dangers this new system may produce? The Government will be out of sight of the common people. This proposed Government is not a Virginian, but an American, Government.

In the Chief Executive, we will have a great and mighty President, possessing the powers of a king,

to be supported in extravagant magnificence. What may happen to the common people with their masters in Philadelphia or New York?

The friends of the Constitution talk about its beauty, but, to me, it has an awful squinting, and it squints toward monarchy.

The President, your American Chief, can make himself absolute. If ever he violates the law, he will come at the head of his army to carry everything before him, or he will give bail, or do what his Chief Justice may order him. But will he submit to punishment?

Rather he will make one bold push for the American throne.

We shall have a king: the army will salute him, monarch; your militia will leave you and assist in making him king, and fight against you. It would be infinitely better to have a Government like Great Britain, with Kings, Lords and Commons, than a Government so replete with such insupportable evils.

Pennsylvania has been tricked into a ratification. If other States that have adopted it have not been tricked, they were hurried to speedy and inconsiderate action.

At best, a Government is but a necessary evil. I can never believe that it is too late to save all that is precious. The imaginary evils of the Confederacy are conjured up to intimidate the people, but fear is the passion of slaves.

The middle and lower classes of American people have not the illuminated ideas to see the latent dangers in the Confederacy. It is only through the illu-

minated imaginations and microscopic eyes of modern statesmen that such defects can be seen where none exist.

Can they afford to leave Virginia out of any Union they may form? When I call this the most mighty State in the Union, do I not speak the truth? Does not Virginia surpass any State? What danger is there that Virginia will be left out of the Union if we reject the Constitution? You may depend upon it, the other States will be glad to have her on her own terms.

“We, the people,” were words used to recommend this damnable document to the masses, to those who may be likened to a herd, and, by the operation of this blessed system, are to be transformed from respectable, independent citizens to abject, dependent subjects or slaves.

If this Constitution shall be adopted, the Northern States will control the Senate, and take from the Southern States the use of the Mississippi River, as a commercial outlet. Mr. Jefferson has counselled Virginia to reject this proposed Government.

The Constitution, if adopted, will destroy the State Governments, like an ambuscade. It will swallow the liberties of the people without warning. Under the Constitution, the acts of Congress may be concealed a century from the public.

The National Government would do what it liked with Virginia, but when the deprivation of our liberty was attempted, what did the genius of Virginia tell us? “Sell all and purchase liberty!” Republican maxims and the genius of Virginia landed you safe on the shores of Freedom.

I look upon that paper as the most fatal plan that could possibly be contrived to enslave a free people!

(Applause from Anti-Constitutionalists.)

ACT III.

Scene II.

CONSTITUTIONAL ARGUMENT OF JOHN MARSHALL.

(Hon. George Wythe occupied the Chair.)

GEORGE WYTHE: (Uses gavel to restore order) What is the pleasure of the Convention?

JOHN MARSHALL: Mr. Chairman.

GEORGE WYTHE: The Chair recognizes Mr. John Marshall, of Richmond.

JOHN MARSHALL: The question before the Convention is a most momentous one; whether our country shall decide for a democracy or a despotism!

I am sure the framers and supporters of the Constitution intend the establishment and security of the former. They are firm friends of the liberty and the rights of mankind we have heard so much extolled. That is why they are for the Constitution. We, sir, idolize democracy. The Constitution is the surest means of protecting liberty. The opposition has seen fit to praise a qualified monarchy. We prefer this system to any monarchy, for it provides for a well-regulated democracy.

I agree with Mr. Henry that maxims should be observed; they are especially essential to a democracy. But what are the maxims of democracy? A strict observance of justice and public faith, and a steady adherence to virtue! These, sir, are the principles of a good Government.

No mischief, no misfortune ought to deter us from a strict observance of justice and public faith. Would to heaven that these principles had been observed under the present Confederation!

Can Virginians, themselves, boast that our own Government is based on Justice? Can we pretend to the enjoyment of political freedom or security, when we are told that a man has been, by an Act of Assembly, struck out of existence without a trial by jury, without examination, without being confronted with his accusers and witnesses, without the benefits of the law of the land? Where is our safety when we are told that this act was justifiable because the person was not a Socrates? Shall it be a maxim that a man shall be deprived of his life without the benefit of the law?

How can we retain the navigation of the Mississippi?

By retaining that weak Government that has hitherto kept it from us? No, but by a Government with the power of retaining it, such a Government as that proposed by the Constitution.

Mr. Henry's one argument that amendments could not be had after adoption proved that they could not be had before.

In all the States, and particularly in Virginia, there are many who are decided enemies of the Union. These are inspired by local interests, their object being disunion. They will not propose amendments that all can agree upon.

When the Federal Government met, we had no idea then of any particular system. The formation of the most perfect plan was our object and wish. It was imagined that the States would, with pleas-

ure, accept that Convention's work. But consider the violence of opinions, the prejudices and animosities which have been since imbibed, and how greatly they operate against mutual concessions.

Can the people, themselves, make treaties, enact laws or administer the Government? Of course, they cannot. They must do such things through agents, and how can these agents act for the people if they are not given power to do so?

That their agents may abuse power is no argument against giving it, for the power of doing good is inseparable from that of doing some evil. If power cannot be given for fear it may be misused, you can have no Government.

Happy the country which can avail itself of the misfortunes of others without fatal experience. There is no analogy between the British Government and the Colonies, and the relations between Congress and the States. We were *not* represented in Parliament; here, under the Constitution, we *are* represented.

What are the objects of a National Government? To protect the United States and promote the general welfare. Protection in time of war is one of its principal objects. We have seen that the States could not do this. The States cannot protect themselves and promote the general welfare. Experience has taught us that.

By the National Government only can these things be done. Shall we refuse to give it power to do them? Look at the great volume of human nature. It will tell you that a defenseless country cannot be secure. The powers of Europe are jealous of us. It is our interest to watch their conduct and guard against them. They must be pleased with our disunion. If

we invite them, by our weakness, to attack us, will they not do it? If we add debility to our present situation, a partition of America may take place.

Were those who are now the friends of the Constitution less active in the defense of Liberty, on that trying occasion, than those who oppose it?

It is not true that the Confederation carried us through the Revolution. Had not the enthusiasm of Liberty inspired us with unanimity, that system would never have carried us through it. The war would have been won much sooner had that Government been possessed of due energy. The weakness of the Confederation and the conduct of the States prolonged the war. United, we are strong; divided, we fall! What good would it do for Congress to merely remonstrate with the States? Under the Constitution, the Congress will be elected by the same voters who elect the State Legislatures.

The Confederation takes away the inducements to industry by rendering property insecure and unprotected. The Constitution, on the contrary, will promote and encourage industry.

Mr. Henry says there are no effective checks in the Constitution. What has become of his enthusiastic eulogium of the American spirit? There is the real check and control. When we consult the common good, we consult our own.

Is not liberty safe with us, where the people hold all powers in their own hands, and delegate them cautiously, for short periods, to their servants, who are accountable for the smallest mal-administration? We are threatened with the loss of our liberties by the possible abuse of powers, notwithstanding the maxim that those who gave may take. It is the peo-

ple who give power, and they can take it back. What shall restrain them? They are the masters who give it, and of whom their servants hold it! On this Government, thus depending on ourselves for its existence, I will rest my safety.

The confederacies of ancient and modern times warn us to shun their calamities and place in our Government the necessary powers, the want of which destroyed them.

How vain and fanciful the argument that National Judges would secure officers of the National Government from merited punishment. The National Courts would not supplant the State tribunals, but they would have concurrent jurisdiction with the Federal courts in those cases wherein the latter have cognizance.

If Congress were to pass a law not warranted by any of its powers, it would be considered by the National Judges as an infringement of the Constitution which they are to guard.

What security have you for justice? The independence of your judiciary, the greatest safeguard that any Government can supply!

Will our most virtuous and able citizens wantonly attempt to destroy the liberty of the people? On the contrary, the virtue and talents of the members of the general Government will tend to the security, instead of the destruction, of our liberty.

The Constitution imparts not what system we have, unless it have the power of protecting us in time of war.

The Constitution, as it stands, fills the great objects which we all desire: Union, safety against foreign

enemies, and protection against factions and party strife—against what has been the destruction of all Republics.

These are the reasons, sir, why I am for the Constitution.

(Long and continued applause, and congratulations from the Constitutionalists.)

(Chairman restores order.)

CHAIRMAN GEORGE WYTHE: What is the further pleasure of the House?

MR. MADISON: I move you, Mr. Chairman, that a vote do now be taken upon the question: Shall the Commonwealth of Virginia ratify the Constitution?

A VOICE: I second the motion.

THE CHAIR: Gentlemen, you have heard the motion that the convention proceed at once to a vote upon the question whether or not this Commonwealth shall ratify the Constitution. Are you ready for the question?

(Constitutionalists shout, "question"; Anti-Constitutionalists, "no"!)

THE CHAIR: The Chair rules that the convention has decided to proceed to a vote upon this all important question. The Secretary will proceed to call the list of delegates and enter their votes "for" or "against" ratification. Gentlemen, please indicate your vote when your name is called.

(Secretary proceeds to call list and enter vote, after which it is totaled up. He confers with Chairman.)

THE CHAIR: Gentlemen, by your vote, you have decided 88 for and 80 against, that the Commonwealth of Virginia ratifies the Constitution of the United States!

(Long and continued applause; and Marshall is carried out on shoulders of his friends. Constitutionalists retire.)

MYSON: Every Anti-Constitutionalist here should urge upon his constituents to resist to the end this high-handed effort to overthrow the sovereign rights of the States.

PATRICK HENRY: My friends, I did my best against the Constitution, but I did it in the proper place. I will never assume the role of defying a Government established by the majority of my fellow-citizens. The Constitution has been finally adopted, and I advise you all, as true and faithful Republicans, that you had better go home, and we will all support this Constitution, until we can amend it, consistent with the legitimate powers of the States.

(They all retire.)

ACT IV.

Envoy to France, 1797.

Scene I.

HOUSE OF TALLEYRAND, USED AS OFFICE, FOREIGN AFFAIRS, OF FRENCH DIRECTORY, NOVEMBER, 1797.

(John Marshall, Charles Cotesworth Pinckney and Ellridge Gerry, America's Ambassadors to France, are seated in an ante-room.)

MR. GERRY: Now, Mr. Pinckney, in this long-sought interview with Monsieur Talleyrand, do be moderate. You must forget the seeming affronts that have been offered you, and we must meet him in a conciliatory mood, in order to accomplish anything for our country. Think of the help France gave us in the Revolution. We must be forgiving.

JOHN MARSHALL: Beaumarchais, Lafayette and other liberty-loving Frenchmen gave us such assistance in our war for independence, during the monarchy, that we can never repay the debt of gratitude we owe, even if we returned to Beaumarchais the fortune he spent for us, which we have not done, but the needed services of these liberty-loving Frenchmen, during the monarchy, that finally, to cripple Great Britain, also espoused our cause, gives no warrant to the present Directory to confiscate our ships and property, imprison and abuse our seamen, deny our rights upon the high seas, and finally insult our Minister!

MR. PINCKNEY: We have the undoubted evidence that the French Government has actually joined in the piratical warfare by the French privateers upon

American commerce. By this course, the Directory hopes to force the United States into taking the armed side of France against Great Britain. In the past year and a half, more than three hundred and forty American vessels have been taken by French privateers, over fifty-five million dollars' worth of American property has been destroyed or confiscated under decrees of the French Directory, and they have beaten and imprisoned our seamen and tortured Captain Walker, of the ship "Cincinnati", by thumbserews for four hours. Mumroe, after his recall by President Washington, circulated the report that I was an "aristocrat", and the Directory have not only refused to receive me, before your arrival, but the Paris police threatened to arrest me, and I was finally ordered out of the territory of the Republic.

JOHN MARSHALL: We should be willing to correct any errors and redress any wrongs committed against the French Government, but we should insist upon an equal measure of justice from France and every other nation, and this course alone is consistent with our national honor.

MR. GERRY: I am for compliance and condescension and the French Directory deny they ever knew of any of these outrages to our commerce.

MR. PINCKNEY: Since the *coup d'état* of September fourth, it is generally understood that Talleyrand exerts a strong influence over the Directory and especially over Bonaparte, and, I am told, he thinks the United States merits no more consideration than Genoa or Geneva.

AN ATTENDANT: The Minister of Foreign Affairs, Monsieur Talleyrand, told me to advise you that he is

detained for a few moments in a conference with the Ambassador of Portugal. He will see you in five or ten minutes.

(Retires.)

JOHN MARSHALL: Mr. Pinckney, as you are the only one of us who speaks French, you better carry on the negotiations, and, as the subjects develop, we can express ourselves.

MR. GERRY: I knew Talleyrand when he was in America. He speaks English.

ATTENDANT: The Minister of Foreign Affairs requests that you step this way.

(They follow him to the room used by Talleyrand as an office. As they enter, he arises,—tall, slender, sallow, with slumbrous eyes, advancing with a shambling limp to meet them. He eyes them keenly.)

M. TALLEYRAND: Have just been going over the Franco-American affairs report with the Directory. I want you to accept cards of hospitality and let me be of any service I can, whether we reach an agreement over our differences or not.

MR. PINCKNEY: We have already permitted much time to pass, and certainly cannot be charged with precipitation. The existing state of things may be desirable to France, but it is ruinous to the United States and cannot be allowed to continue indefinitely.

MR. GERRY: But, my dear Minister, we will await your pleasure and are determined to preserve the *status quo* and to act with unanimity.

M. TALLEYRAND: The Directory are exceedingly irritated at Mr. Adams' speech before Congress and his grave reflections against the integrity of the motives of the officers of the French Government. They should be softened.

MR. MARSHALL: In what way?

M. TALLEYRAND: Gentlemen, we must have a formal statement from you, in writing, that the speech of our citizen, President Barroa, was not offensive to America; you must affirm that the decree of the Directory, which your President has denounced, was not contrary to the treaty of 1778, that he had no reference to France when he spoke of the depredations to American trade by privateers.

If this is done, the Directory are inclined to renew their old-time relations with the United States, and I would use my influence to bring about a new treaty which would place France on the same footing with England, but, before this is attempted, your country must liquidate all the claims of your citizens for losses of ships and property taken on the seas, and there must be a secret article providing for a loan from the United States to France.

I will not disguise from you that the essential condition to any treaty is that you must pay money—you must pay a great deal of money. Please excuse me for a few moments.

(He retires.)

(The envoys confer.)

(Gerry indicating he is opposing Marshall and Pinckney, as he remonstrates with them. They are obdurate.)

(Re-enter Talleyrand.)

JOHN MARSHALL: Mr. Pinckney and I are agreed that the proposition you submit is totally inadmissible and it would be derogatory to the interests and the honor of the United States to permit ourselves to negotiate regarding any one of the propositions mentioned.

We could not deny the application of any of our President's utterances, which were predicated upon the facts.

We could not permit any blame or censure to be, directly or indirectly, imputed to the United States, nor could we entertain any suggestions looking to the repudiation of existing treaties.

Our country will not brook any restraint upon its lawful commerce, and we could not countenance any departure from the absolute recognition of the complete sovereignty and independency of the United States in matters of policy, commerce or Government.

We could not consider paying the debts due by contract from France to our citizens for the violation of existing treaty.

Mr. Pinckney and I are also decidedly of opinion that it is little short of an insult to our nation to talk of a loan to France, since this would be to violate our treaty with England and would be next to an absolute surrender of the independence of the United States. In short, that you have demanded from us terms to which it is impossible for us to accede and which we hold are totally inadmissible.

M. TALLEYRAND: The Directory are jealous of their honor and the honor of the nation; they demand the same treatment formerly accorded the Monarchy, and their honor must be maintained in the manner required unless, as envoys, you can substitute something perhaps more valuable. The Directory must look after France.

JOHN MARSHALL: And we must look after the United States. We came to adjust international differences, but, if your Directory prefer war, we will regret the unavoidable necessity of defending ourselves, which we have learned fairly well how to do.

M. TALLEYRAND: Have you no message to send to the Directory? They expect you to offer money. What is your answer?

MR. PINCKNEY: It is "No" (shouting); no not a sixpence!

JOHN MARSHALL: Tell your Directory that, while we came here to conciliate, if possible, and hold the friendship of France, there is one object which is still dearer to us than the friendship of France or any other country, and that is our national independence! That America has taken a neutral station—she had a right to take it; no nation has a right to force us out of it. That, to lend money to a belligerent power is to relinquish our neutrality and take part in the war. To lend this money under the lash and coercion of France would be to relinquish our Government and ourselves, and to submit to a foreign government imposed on us by force. America is able to maintain her independence, and must deserve to lose it if she permitted it to be wrested from her. Mr. Pinckney and myself see no further reason to prolong the conference.

MR. GERRY: I am sorry, Monsieur l' Talleyrand. I am most solicitous of preserving peace.

M. TALLEYRAND: The Directory have a new decree they will issue regarding the commerce of the United States as soon as I advise them our negotiations are concluded.

JOHN MARSHALL: You can tell them they are at liberty to promulgate it, if its issuance is conditioned on the acceptance by the United States of the conditions named by the Minister of Foreign Affairs.

M. TALLEYRAND: You think, by returning and exposing the unreasonableness of the demands of France to

your countrymen, you will unite them in their resistance to these demands, but in this you are mistaken. The diplomatic means France possesses in your country are sufficient to enable her, through the French party in America, to throw the blame for our rupture on the Federalists, as you term yourselves, but on the British as France terms you, and you may assure yourselves that this will be done. You cannot rely upon England to help you. France can and will attend to England. We will invade her, break her and force her to sue for peace, and where, then, will you be?

JOHN MARSHALL: We will be across the sea, prepared to defend ourselves against all intruders; encircled by no dangerous powers, America neither fears nor is jealous of her enemies, and now we bid you good-day and request our passports.

M. TALLEYRAND: They will be sent to your hotels. Good afternoon.

(Exeunt.)

ACT IV.

Scene II.

**BANQUET AT O'ELLER'S TAVERN, PHILADELPHIA,
JUNE 18, 1798.**

"Millions for Defense, but Not a Cent for Tribute."

(One hundred and twenty men are gathered around the banquet table, including the Speaker of the House of Representatives, the Cabinet members, Justices of Supreme Court, Speaker of Pennsylvania Senate, field officers of the army, Bishops Carroll and White, and other distinguished citizens.)

John Marshall, the guest of honor, at the right of the toastmaster.

(At the close of a hilarious banquet, the toastmaster raps for attention.)

TOASTMASTER: My friends, we are gathered tonight to express to our distinguished guest of honor, our

complete satisfaction with the manly manner in which he represented his country as Special Envoy to France, and as a token of our affection for his person and our approbation of the patriotic firmness with which he sustained the dignity of our country during his important mission.

We would, indeed, be remiss in our duty toward a most deserving citizen, who has so signally served our country, did we not make proper acknowledgement of our love and esteem on his return to us, after having so signally served us under such trying and delicate circumstances.

Our citizens now know how Talleyrand tried his mettle, and was glad to retire from the conflict after crossing swords with John Marshall. Our people know that this patriotic Virginian was the author of the brilliantly written diplomatic correspondence, henceforth to be known to history as the "X-Y-Z letters."

You have seen today how our citizens turned out to honor him. Floats of carriages filled with members of Congress, and prominent Americans, and hundreds of people on horseback and on foot went forth to meet him. Three corps of cavalry, in full uniform, led the procession which followed his carriage six miles out of Philadelphia. You heard the church bells ring and cannon thunder, and witnessed the parade amid the shouts of our exulting multitudes, speaking the gratitude of their hearts for the splendid manner in which he spoke for America.

Twenty years ago, almost to a day, he was party to the parade that marched through our city streets, but then he was a patriot soldier, following his Commander-in-chief, the great Washington, to drive the

Tories from our nation's capital, on the way to Monmouth from Valley Forge.

You did not fight in vain, our gallant soldier of the Revolution, and we honor ourselves in meeting tonight to honor you!

I now propose the toast: "The United States: May she always remain free, sovereign and independent!"

(They drink.)

A SOLDIER: I propose the toast: "General Washington: May his name stand as a rampart of defense against the assaults of our enemies, and a bulwark of protection of our country's peace!"

(They drink.)

ANOTHER SOLDIER: I propose a toast to "The heroes who fell in the Revolutionary War: May their memory never be dishonored by a surrender of the Freedom purchased with their blood!"

(They drink.)

YOUNG BANQUETER: I propose the toast: "The gallant youth of America: May they disdain to hold as tenants at will, the independence inherited from their ancestors!"

(They drink.)

JUSTICE OF SUPREME COURT: I propose the sentiment expressed by our distinguished guest, while standing for his country's honor in that foreign land, which will become one of the historic maxims of our nation: "Millions for defense, but not a cent for tribute!"

(They drink.)

SPEAKER OF HOUSE OF REPRESENTATIVES: I would like to have you drink to the toast: "The Constitution: *Esto perpetua!*"

(They drink again.)

(Cries of "Marshall, Marshall".)

TOAST MASTER: General Marshall, will you not honor us with a few remarks?

JOHN MARSHALL: Mr. Toast Master and my friends, you overcome me with your generous and unmerited praise. I was honored sufficiently in being asked to represent my country on this foreign mission. It is a sufficient reward to return to my country, my family and my friends. Any citizen who loved his country exclusively would have acted as my associates and I did, while on this mission. Any of you would have done as we did, and many would have done much better.

We were asked to repudiate claims for our Government and its citizens, based upon a violation of their rights of property, that we knew were just; to retract the utterances of our Chief Executive, that were based upon the facts, and to negotiate a loan to a belligerent power, in violation of our duty as a neutral nation. These were prescribed as the preliminary conditions precedent to the negotiation of any treaty. We did not feel that it was consistent with our country's honor to negotiate upon any such terms.

(Applause.)

I am deeply grateful for the honor you have shown me.

(Retires amid prolonged applause.)

TOAST MASTER: I propose the final toast to "General Marshall: The man whom his country delights to honor"!

(They all drink again.)

ACT V.

Chief Justice.

Scene I.

**TRIAL OF AARON BURR FOR TREASON, MAY 22, 1807, IN
HALL, HOUSE OF DELEGATES, RICHMOND, VA.**

(George Hay, U. S. District Attorney, and William Wirt appeared for the Government, and John Wickham and Luther Martin, with Aaron Burr, pro se, for defendant.)

Theodosia Burr Alston and her little son seated by her father. Many lawyers were within the Bar of the Court, and the Hall was crowded with spectators.

Reporters for the press around a table inside the Bar.)

GEORGE HAY: (Opened the argument for the Government). Your Honor, that the Government has established beyond reasonable doubt, the charge of High Treason lodged against the defendant seems too clear for argument.

Burr's cipher letter to General Wilkinson certainly proved that he was on his way to attack Mexico at the time his villiany was thwarted by the patriotic measures of the true-hearted Commander of the American Army. Who can doubt, in the light of the facts presented, that Burr had intended to take New Orleans and make it the capital of his empire? Let us briefly examine the evidence.

Wilkinson's affidavit demonstrated the defendant's intention

THE CHIEF JUSTICE: That goes for nothing unless you have produced other evidence to prove the overt act.

GEORGE HAY: (Continuing) We proved by Peter Taylor, Blennerhassett's former gardener, and Jacob

Allbright, a laborer on his island, that Mrs. Blennerhassett had sent a letter to Colonel Burr in Kentucky, warning him not to return to the island, that Blennerhassett, who was also in Kentucky, confided to them that they were going to take Mexico and make Burr, King; that Burr, Blennerhassett and associates had bought eight hundred thousand acres of land and wanted young men to settle it.

Allbright told how Mrs. Blennerhassett confided to him that Colonel Burr and her husband were going to lay in provisions for an army for a year; that Blennerhassett had, himself, asked him to join the expedition which was going to settle a new country, and two men, whom Allbright had met in the woods, had told him they were Burr's men and were going to take a silver mine from the Spanish.

He told how General Tupper laid his hands on Blennerhassett and said: "Your body is in my hands, in the name of the Commonwealth," and how seven or eight muskets were levelled at the General, and how General Tupper then changed his speech and wished them all "God speed."

The Government has produced witnesses, who testified under oath to these facts, and we submit that all these facts, in connection with the defendant's stealthy flight from justice, establish that he is guilty of High Treason.

JOHN WICKHAM: (One of Burr's counsel, answered Hay). If the Court please, there has been no testimony produced to show an overt act of treason. During all the time covered by the evidence pertaining to the events on Blennerhassett's Island, the defendant, Colonel Burr, was in the State of Kentucky.

There is no such thing as constructive treason. Under the Constitution of the United States, the alleged Mexican project was not only innocent, but meritorious, for everybody knew that we were in an intermediate state between war and peace with Spain. President Jefferson's message to Congress is now a part of the history of these events. If war did not break out, Colonel Burr's expedition was perfectly suitable to another and a wholly peaceful enterprise, to colonize his lands in Louisiana, which President Jefferson had, himself, recommended, when he advised that we should have strong settlements beyond the Mississippi.

The facts narrated by the witnesses and referred to by Mr. Hay are perfectly consistent with the laudable intention of Colonel Burr to use his expedition to defend our country if war with Spain were declared, and, if not, to settle and colonize his Louisiana lands, which had been recommended by the President.

Your Honor knows why the provisions concerning treason were written into the American Constitution, —to protect the people against that horrible and dangerous doctrine of constructive treason which had stained the English records with blood and filled the English valleys with innocent graves. The men who framed that instrument remembered the crimes that had been perpetrated under the pretense of justice, and, having risked their necks under the law, they feared despotism and arbitrary power more than they feared treason.

A gentleman, both by birth and education, we find the Government, on evidence of the merest trifles,

attempting to convict the defendant of crimes whose baseness could be harbored only in the heart and mind of the vilest criminal.

Does it stand to reason that a patriotic soldier of the Revolution, in his youth,—a man who enlisted to defend his country as a private and, through his meritorious service, became aide-de-camp to General Putnam; who endured the hardships and privations of Valley Forge, for love of his country, and distinguished himself by his bravery at Monmouth; a man who had later been selected by the State of New York to represent that commonwealth in the Senate of the United States,—is it logical to conclude that such a man, in the evening of his life, would conspire to overthrow the Government of that country that, in his youth, he had risked his life to save?

It is certainly not asking too much that such a citizen, when accused of a crime so foul, should receive the benefit of the doubt and should be tried according to the law of treason, established by the organic law he helped to frame, instead of the English law of constructive treason.

Judged by that standard, the Government has wholly failed to establish the guilt of the defendant, and he should be discharged and allowed to return to the arms of his daughter, his beloved Theodosia.

COL. BURR: May it please the Court: I arise not to remedy any omissions of my counsel, who have done great justice to the subject, but rather to make some observations of a personal nature.

Treason, under our Constitution, has been judicially defined to mean “deeds”; yet I have been prose-

cuted on mere conjecture. In the language of the good Queen Hermione:

"My life, I prize it not a straw;
But for mine honor (which I would free),
If I shall be condemned upon surmise,
All proofs sleeping else, but what mad jealousies awake,
I tell you 'tis rigour, and not law."

The whole country has been unjustly aroused against me. Wilkinson frightened the President, and Jefferson, in turn, alarmed the people.

Have I acted like a guilty man? I voluntarily submitted myself to the jurisdiction of the criminal courts of Kentucky and Mississippi, and, after the fullest investigation of the facts, I was discharged.

The people among whom I journeyed saw nothing hostile or treasonable in my expedition. And what about my alleged "flight?" Only after I had been denied the protection of the law and when armed men, under illegal orders of an autocratic military authority, were seeking to seize me violently, acting upon the advice of my friends, did I abandon a country where the law ceased to be the sovereign power.

Why did the guards, who brought me from Alabama to Richmond avoid every magistrate on the way? Why have I been refused the privilege of pen, ink and paper, and denied the right even to write to my daughter? I submit that this is persecution, not prosecution.

It is true that, while being conducted by my military escort through South Carolina, I asked three civilians to see to it that I was delivered from this military despotism and demanded the interposition of the civil authorities. I asked to be subjected only to the laws of my country. Was that a criminal act?

Under the English law of treason, the rule ob-

tained that enough heads must be cut off to glut the vengeance of the Crown. Shall this rule be established in this country, in the face of our Constitution at the instance of a champion of the people's rights?

In Philadelphia alone, after the British evacuation of that place, during the Revolution, hundreds were tried for treason, and, hence, it is that the quarreling members of the Convention that framed our Constitution were in accord upon this subject.

I now crave the benefit of the beneficent provision of our Constitution, not so much for the protection or preservation of my own poor life, but that my case may stand as a precedent to protect the innocent of future ages from this vile charge, and to the end that the pages of American history will never be stained with prosecutions for treason, begun without cause, conducted without decency, and ending in iniquitous convictions, without the slightest feeling of remorse.

THE CHIEF JUSTICE: The question to be decided is, whether or not the Government has produced evidence sufficient to justify holding the defendant upon the charge of treason. Proof, strong enough to convict, on a trial in chief, or even to convince the Judge, himself, hearing the evidence, of the defendant's guilt, is not necessary to justify the Court in holding him for action by the Grand Jury, but there must be enough testimony to furnish good reason to believe that Colonel Burr actually committed the crime with which he stands charged, before he can be held.

The common law text books lay down the rule that a prisoner can be discharged, on preliminary examination, only when it appears that the suspic-

ion against him was wholly groundless; but, of course, this does not mean that the hand of malignity may grasp any individual against whom hate may be directed, or whom it may capriciously seize, charge him with some secret crime, and put him on the proof of his innocence.

Probable cause to suspect Colonel Burr guilty of an attempt to attack the Spanish possessions was perhaps shown by General Wilkinson's evidence, but that is all it does show, and the charge of treason is quite a different thing.

As this is the most atrocious offense which can be committed against the political body, so it is the charge which is most capable of being employed as the instrument of those malignant and vindictive passions which may rage in the bosoms of contending parties struggling for power.

Treason is the only crime specifically mentioned in the Constitution; the definition of all others is left to Congress; but the Constitution, itself, carefully and plainly describes treason, and prescribes how it must be proved. Does the testimony show probable grounds for believing that the defendant has committed treason?

The only evidence which points toward treason are the affidavits of Wilkinson and Eaton, and these, the Government contends, at least demonstrates the defendant's intent. But, if his overt "act did not o'ertake his bad intent, it must be buried, but as an intent that perished by the way".

He is charged with having actually executed his vile purpose, not with having merely harbored a bad intent.

These affidavits, therefore, go for nothing, unless there is other evidence to prove the overt act.

The affidavits of Eaton and Wilkinson constitute all the relevant evidence bearing on the charge of treason, and, although the whole transaction was examined by the Supreme Court, in the *habeas corpus* case of Bollman and Swartout, holding that practically the same facts failed to constitute a *prima facie* case, upon the charge of treason, no new facts have been offered here.

Where is the evidence that Colonel Burr assembled an army to levy war on the United States? Not before the Court, certainly. Mere suspicion cannot prevail in such a serious charge, when means of proving the suspected facts have not been secured.

Where the truth can easily be established if it exists, and yet no proof of it is brought forward, surmise cannot take its place, for everybody must admit that the ministers of justice, at least, cannot entertain unsupported conjectures or assertions.

In this case, the fact to be established, as alleged, is an act of great public notoriety. It must exist in the view of the world, or it cannot exist at all. Months have passed since it is alleged the fact did occur, if it ever happened. More than five months have passed since the Supreme Court declared the necessity of proving the fact, if it exists. Why is it not proved?

It is the duty of the Executive Department of our Government to prosecute crimes. It would be an easy matter for the Government to procure the evidence that defendant had assembled troops five months ago. Certainly the Court cannot find that there has been any remissness on the part of the Executive

Department of the Government, and, since no evidence has been presented that Colonel Burr assembled soldiers, the suspicion which, in the first instance, the Government created against him, ought not to be continued, unless the want of proof can be in some manner accounted for according to the great, fundamental law of our country, which neither the Legislature nor the Courts can transcend.

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

To constitute the crime for which the prisoner now before the Court is to answer, war must actually have been levied against the United States. To complete the crime of levying war against the United States, there must have been an actual assemblage of men for the purpose of executing a treasonable design. In the case now before the Court, a design to overthrow the Government of the United States in New Orleans by force would have been unquestionably a design which, if carried into execution, would have been treason, and the assemblage of a body of men to carry it into execution would amount to levying war against the United States.

The decisions heretofore made by the Courts of the United States have been in conformity with these principles, and, judged by these principles, we must hold that the charge of treason against Colonel Burr has not been established by the Government, and he must be discharged on this charge.

Court will stand adjourned.

(Wild excitement. Theodosia and Col. Burr's grandchild embrace him. His counsel congratulate him, and the spectators argue with each other and seemingly take sides.)

ACT V.

Scene II.

McCULLOCH vs. MARYLAND.

(The Supreme Court Room in basement of Capitol at Washington, D. C., February Term, 1819.)

A number of lawyers are seated in space before the bar of the Court, Daniel Webster, William Wirt and Wm. Pinckney being seated at one table, and Joseph Hopkinson, Walter Jones and Luther Martin at another, with many spectators on the benches in the rear.)

BAILIFF: The gentlemen of the bar will please stand; The Honorable Supreme Court of the United States is about to convene.

(Members of the bar stand. The Supreme Court Judges now enter the room, Chief Justice John Marshall leading, followed by Associate Justices Bushrod Washington, William Johnson, Brockholst Livingston, Gabriel Duvall and Joseph Story, who stand while the Bailiff opens Court.)

BAILIFF: Oh yez! Oh yez! The Honorable Supreme Court of the United States is now in session for the transaction of business.

Those having business with the Supreme Court will draw near and others will give respectful attention.

God save the United States and this Honorable Court!

(Judges are seated, the Chief Justice in the middle.)

CHIEF JUSTICE: Gentlemen of the Bar, have you any formal motions? If not, we will proceed with the call of the docket.

McCulloch v. State of Maryland *et al.*

Webster and Pinckney for plaintiff in error;

Hopkins, Jones and Martin for defendant.

Are you ready to proceed, gentlemen?

MR. WEBSTER: We are.

CHIEF JUSTICE: Then proceed.

DANIEL WEBSTER: If the Court please: It is admitted by the parties in this cause that, under the Act of Congress of April 10, 1806, the Bank of the United States was organized, and afterwards engaged in business in the City of Philadelphia, State of Pennsylvania. That, in pursuance of authority delegated by the president and directors of said bank, in the year 1817, it established in the City of Baltimore, Maryland, a branch of said bank of deposit and discount, which, until May 1, 1818, continued to carry on a general banking business. That, on February 2, 1818, the General Assembly of Maryland passed an act

"To impose a tax on all banks, or branches thereof, in the State of Maryland, not chartered by the Legislature",

providing for a graduated stamp tax on all notes issued by it, or, in lieu thereof, an annual license tax, in gross, of \$15,000.00, in default of which the officers of the bank were made guilty of a misdemeanor and subjected to a fine.

It is further admitted that James William McCulloch was the cashier of said branch of the Bank of the United States, and he did issue notes without paying said tax or stamping said notes, as a result of which, John Jones, the treasurer of the Western Shore, sued the defendant cashier to recover the penalties provided by the Maryland law.

It is also admitted that no authority to conduct the said branch bank in the State of Maryland was procured, or attempted to be procured, from the State of Maryland, the plaintiff in error contending that no such authority was necessary, since the State of Maryland has regularly adopted the Constitution of the United States and it is now one of the States of the Union.

The immediate question is the constitutionality of the Maryland statute, but the basic issue is far broader than this. It involves the supremacy of the National Government against the domain of the State Governments, and, hence, the very existence of the Union.

The reasoning is not new to this Court that Congress, under the law, can pass all laws necessary and proper to carry out the powers conferred.

Alexander Hamilton has clearly demonstrated that, under this power, Congress had ample authority to charter a bank, and now, after thirty years of acquiescence, it is too late to deny the power of the National Legislature to establish a bank.

Assuming the law establishing the Bank of the United States to be constitutional, can Maryland or any other State tax a branch of that bank? If the states can tax the bank at all, they, or any one of them, can put it out of existence, since a power to tax involves a power to destroy.

If this Act of Maryland shall be upheld by this Court, then Maryland, in taxing the bank, has, in effect, taxed the National Government, itself.

The law makes this tribunal the final arbiter of questions arising between the states and the National Government. If the states may tax the bank, there is no limit but their own discretion, and the bank, therefore, must depend upon the discretion of the State Government for its existence. This conclusion is inevitable. This bank, therefore, chartered by Congress, cannot exist if this law of Maryland shall be upheld.

One or the other of these laws must be supreme, and a surrender of the power asserted by the National Government would be a giving up of those fundamental and essential powers without which the Government could not be maintained. To hold otherwise, would be to declare that Congress can only exercise its constitutional powers subject to the controlling discretion and under the sufferance of the State Governments. This doctrine would destroy the Union.

The Constitution provided for the Union to preserve liberty, and, when we surrender the Union, we likewise give up our liberty and independence, which, God grant, may never occur with the concurrence of this tribunal, created by the Constitution to preserve these principles of a free government!

JOS. HOPKINSON: The question of the constitutional power of Congress to incorporate the Bank of the United States has, for years, divided the opinions of the first men of our land. Necessity was the plea advanced by General Hamilton for the first bank of the United States. If we grant that that necessity existed then, it does not now. We now have banks, with vast credits, organized under state laws and so spread over the country as to meet the commercial needs of our people. Unless this federal bank was necessary, therefore, Congress had no power to authorize the organization of the bank. But, even if the incorporation of the bank were within the constitutional power of Congress, we deny that, as an incident of that power, it could authorize branch banks in different states without their authority.

The establishment of a bank in a state without regard to its interests, its policy or institutions, with

its wide spreading branches spreading everywhere, and interfering with and influencing the business of the different communities, is an encroachment upon the powers reserved to the states by the Constitution.

But, if it be granted that it can thus enter a state unbidden, and where it is not invited, can it come there in a sovereign capacity, paramount to the sovereignty of the state, and with privileges and exemptions not possessed by the property or citizens of the state?

Is it then exempt from taxation or regulation by the states, because it had the charter from the National Government?

The institution does not belong to the Government, but to private parties. Upon what basis, then, can they claim exemption for their property invested in this bank from the taxing powers of the states?

Shall it be private in its direction and interests, public in its rights and privileges, a trading money-lender in its business, an uncontrolled sovereign in its powers? Is there anything in the Constitution to limit or control the rights of a state to tax the branches of this bank located in such states?

If the Federal Government must have a bank, all collisions will be avoided by establishing the parent bank in its own district, where it holds an exclusive jurisdiction, and planting its branches in such states as shall assent to it, and using state banks where such assent cannot be obtained. This course would be consistent with the legitimate power of the Federal Government, and also recognize the sovereign rights of the states.

We submit that the judgment of the Maryland Court of Appeals was right and the decision should be affirmed.

ACT V.

Scene III.

(Court, officers, counsel and spectators seated same as in Scene II.)

CHIEF JUSTICE MARSHALL: (Reads the opinion of the Court):

“In the case now to be determined, the defendant, a sovereign state, denies the obligation of the law enacted by the Legislature of the Union; and the plaintiff, on his part, contests the validity of an act which has been passed by the Legislature of that State. The Constitution of our country, in its most interesting and vital part, is to be considered; the conflicting powers of the Government of the Union and of its members, as marked in that Constitution, are to be discussed, and an opinion given, which may essentially influence the great operations of the Government.

No tribunal can approach such a question without a deep sense of its importance and of the awful responsibility involved in its decision.

But it must be decided peacefully, or remain a source of hostile legislation, perhaps of hostility of a still more serious nature, and, if it is to be so decided, by this tribunal alone can the decision be made. On the Supreme Court of the United States has the Constitution of our country devolved this important duty.

The first question, then, in the cause, is, has Congress power to incorporate a bank?

It has been truly said that this can scarcely be considered as an open question, entirely unprejudiced by the form of proceedings of the Nation respecting it.

The principle now contested was introduced at a very early period of our history, has been recognized by many successive legislatures and has been acted upon by the Judicial Department, in cases of peculiar delicacy, as a law of undoubted obligation.

* * * * *

In discussing this question, the counsel for the State of Maryland have deemed it of some importance, in the construction of the Constitution, to consider that instrument, not as emanating from the people, but as the act of sovereign and independent states. The powers of the general Government, it has been said, are delegated by the states, who, alone, are truly sovereign; and must be exercised in subordination to the states, who, alone, possess supreme dominion.

It would be difficult to sustain this proposition. The convention which framed the Constitution was, indeed, elected by the State Legislatures, but the instrument, when it came from their hands, was a mere proposal, without obligations or pretensions to it. It was reported to the then existing Congress of the United States with a request that it might "be submitted to a convention of delegates chosen in each state by the people thereof under the recommendation of its Legislature for their assent and ratification."

This mode of proceeding was adopted; and, by the convention, by Congress, and by the State Legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively and wisely on such a subject, by assembling in convention. It is true, they assembled in their several states, and where else should they have assembled? No political dreamer was ever

wild enough to think of breaking down the lines which separate the states and of compounding the American people into one common mass. But the measures they adopt do not, on that account, cease to be the measures of the people, themselves, or become measures of the State Government.

From these conventions, the Constitution derives its whole authority. The Government proceeds directly from the people, is ordained and established in the name of the people, and is declared to be ordained "in order to form a more perfect Union, establish justice, insure domestic tranquility, and secure the blessings of liberty to themselves and their posterity". The assent of the states, in their sovereign capacity, is implied in calling a convention, and thus submitting that instrument to the people, but the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negatived, by the State Government. The Constitution, when thus adopted, was of complete obligation and bound the state sovereignties.

* * * * *

"If any one proposition could command the universal assent of mankind, we might expect it to be this; that the Government of the Union, so limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature; it is the Government of all; its powers are delegated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The Nation, on those subjects on which it can act, must

necessarily bind its component parts. But this question is not left to mere reason: The people have, in express terms, decided it by saying:

‘This Constitution and the Laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land’.

and by requiring that the members of the State Legislatures and the officers of the Executive and Judicial departments of the states shall take the oath of fidelity to it.

The Government of the United States then, though limited in its powers, is SUPREME; and its laws, when made in pursuance of the Constitution, form the supreme law of the land, ‘Anything in the Constitution or laws of any state to the contrary notwithstanding’.

* * * * *

It must have been the intention of those who gave these powers to insure as far as human prudence could insure their beneficial execution. Congress is authorized ‘to make all laws which shall be necessary and proper for carrying into execution’ the powers of the general Government. This provision is made in a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.

* * * * *

The power of Congress to create and, of course, to continue the bank can no longer be considered as questionable; that the power of taxing it by the states may be exercised, so as to destroy it, is too obvious to be denied. But taxation is said to be an absolute power, and, like sovereign powers of other descriptions, is trusted to the discretion of those who use it; but the

very terms of this argument admit that the sovereignty of the state, in the article of taxation, itself, is subordinate to, and may be controlled by, the Constitution of the United States.

The people of a state give to their government a right of taxing themselves and their property, but the means employed by the Government of the Union have no such security, nor is the right of the state to tax them sustained by the same theory. They are given by all for the benefit of all, and, upon theory, should be subjected to that Government, only, which belongs to all. We find, then, on just theory, a total failure of this original right to tax the means employed by the Government of the Union for the execution of its powers. The right never existed, and the question whether it has been surrendered cannot arise.

* * * * *

That the power to tax involves the power to destroy, that the power to destroy may defeat and render useless the power to create, that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures is declared to be supreme over that which exerts the control, are propositions not to be denied.

* * * * *

The American people did not design to make their government dependent on the states.

* * * * *

The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the states have no power, by taxation or other-

wise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general Government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared. We are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.”

EPILOGUE.

In days of old, a man of God, with power He gave, made sun
and moon stand still!

We've seen a man, in our own land, with wisdom from on high,
Prevent a group of sovereign States
From wrecking a Republic
That God decreed should live!
This was God's work and
John Marshall was His instrument!
Just as was Joshua, when he obeyed His will,
And, with the Lord, fought for his chosen ones of Israel!

With the same Courage from on high that enabled Daniel to calm
the angry lions in their den,
The great Chief Justice, all undaunted, faced the anger of the
"Sovereign States",
That were determined to dissolve the Union as soon as it was
formed.
With the calm, majestic power of the Law, which all the people
had established,
He stilled the wild dissension of the States,
And, by God's Grace, upheld the power the people had decreed,
And their full right to liberty and union in this land.

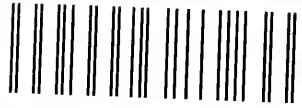
We thank Thee, God of Nations, for this man,
Whom Thou didst send to bear the light that cast no shadow,
To show the way to found a Government to those who longed for
liberty,
But struggled in the dark,
And did not know that it must come through Law!
With the example of the few heroic deeds of this great man
Though so imperfectly presented in this play,
Grant us to return to the routine of our daily tasks in life,
With an abiding faith in the institutions of the Fathers
And a new determination to defend, against all men, the
Constitution of our Country,
Which was vitalized by the interpretations of our great Chief
Justice,
John Marshall!!







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